

HOUSE BILL No. 1256

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2.4.

Synopsis: Distributed generation facilities. Provides that an "alternate energy production facility" includes a facility that produces electricity from certain renewable energy resources. Provides that the rates paid by an electric utility for the purchase of energy from alternate energy production facilities must equal at least 90% of the retail rate charged by the utility for similar retail customers. Requires the utility regulatory commission (IURC) to adopt emergency rules amending the IURC's rules concerning the following: (1) cogeneration and alternate energy production facilities; (2) net metering; and (3) customer-generator interconnection standards. Requires that the amended rules must do the following: (1) Allow the interconnection of generating facilities that make use of certain technologies. (2) Provide that the rates paid by an electric utility for the purchase of energy from certain generating facilities must equal at least 90% of the retail rate charged by the utility for similar retail customers. (3) Allow certain generating facilities with a nameplate capacity of 100 kilowatts or less to interconnect to the distribution facility of an electric utility. (4) Provide that an electric utility may not require a net metering customer to maintain liability insurance if the customer's net metering facility meets certain certification and interconnection requirements. Provides that any existing rules are void to the extent they do not comply with the requirements for the amended rules. Requires the IURC to report to the regulatory flexibility committee on the IURC's progress in adopting the amended rules.

Effective: Upon passage; July 1, 2008.

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January 14, 2008, read first time and referred to Committee on Commerce, Energy and Utilities.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1256

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-2.4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Alternate energy production facility" means:

(1) a:

(A) solar **facility**;

(B) wind turbine;

(C) waste management **or organic waste biomass facility, including an anaerobic digestion system**;

(D) resource recovery **facility**;

(E) **facility using** refuse-derived fuel; or

(F) wood burning facility;

that is used to produce electricity;

(2) any land, system, building, or improvement that is located at the project site and is necessary or convenient to the construction, completion, or operation of the facility; and

(3) the transmission or distribution facilities necessary to conduct

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the energy produced by the facility to users located at or near the project site.

The term also includes fuel cells that use renewable fuels to produce electricity.

(c) "Cogeneration facility" means:

(1) a facility that:

(A) simultaneously generates electricity and useful thermal energy; and

(B) meets the energy efficiency standards established for cogeneration facilities by the Federal Energy Regulatory Commission under 16 U.S.C. 824a-3;

(2) any land, system, building, or improvement that is located at the project site and is necessary or convenient to the construction, completion, or operation of the facility; and

(3) the transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

(d) "Electric utility" means any public utility or municipally owned utility that owns, operates, or manages any electric plant.

(e) "Small hydro facility" means:

(1) a hydroelectric facility at a dam;

(2) any land, system, building, or improvement that is located at the project site and is necessary or convenient to the construction, completion, or operation of the facility; and

(3) the transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

(f) "Steam utility" means any public utility or municipally owned utility that owns, operates, or manages a steam plant.

SECTION 2. IC 8-1-2.4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) Subject to section 5 of this chapter, the commission shall require electric utilities and steam utilities to enter into long term contracts to:

(1) purchase or wheel electricity or useful thermal energy from alternate energy production facilities, cogeneration facilities, or small hydro facilities located in the utility's service territory, under the terms and conditions that the commission finds:

(A) are just and economically reasonable to the corporation's ratepayers;

(B) are nondiscriminatory to alternate energy producers, cogenerators, and small hydro producers; and

(C) will further the policy stated in section 1 of this chapter;

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and

(2) provide for the availability of supplemental or backup power to alternate energy production facilities, cogeneration facilities, or small hydro facilities, on a nondiscriminatory basis and at just and reasonable rates.

(b) **Subject to subsection (f)**, upon application by the owner or operator of any alternate energy production facility, cogeneration facility, or small hydro facility, or any interested party, the commission shall establish for the affected utility just and economically reasonable rates for electricity purchased under subsection (a)(1). The rates shall be established at levels sufficient to stimulate the development of alternate energy production, cogeneration, and small hydro facilities in Indiana, and to encourage the continuation of existing capacity from those facilities.

(c) **Subject to subsection (f)**, the commission shall base the rates for new facilities or new capacity from existing facilities on the following factors:

(1) The estimated capital cost of the next generating plant, including related transmission facilities, to be placed in service by the utility.

(2) The term of the contract between the utility and the seller.

(3) A levelized annual carrying charge based upon the term of the contract and determined in a manner consistent with both the methods and the current interest or return requirements associated with the utility's new construction program.

(4) The utility's annual energy costs, including current fuel costs, related operation and maintenance costs, and any other energy-related costs considered appropriate by the commission.

Until July 1, 1986, the rate for a new facility may not exceed eight cents (\$.08) per kilowatt hour.

(d) **Subject to subsection (f)**, the commission shall base the rates for existing facilities on the factors listed in subsection (c). However, the commission shall also consider the original cost less depreciation of existing facilities and may establish a rate for existing facilities that is less than the rate established for new facilities.

(e) **Subject to subsection (f)**, in the case of a utility that purchases all or substantially all of its electricity requirements, the rates established under this section must be equal to the current cost to the utility of similar types and quantities of electrical service.

(f) After June 30, 2008, the rates established by the commission under subsections (c), (d), and (e) may not be less than ninety percent (90%) of the retail rate charged by the utility to:

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(1) the alternate energy production facility, cogeneration facility, or small hydro facility, for electricity supplied to the alternate energy production facility, cogeneration facility, or small hydro facility (other than backup power, maintenance power, or interruptible power), if the facility is a customer of the electric utility; or

(2) another retail customer with similar load characteristics as the alternate energy production facility, cogeneration facility, or small hydro facility, if the facility is not a customer of the electric utility.

(g) In lieu of the other procedures provided by this section, a utility and an owner or operator of an alternate energy production facility, cogeneration facility, or small hydro facility may enter into a long term contract in accordance with subsection (a) and may agree to rates for purchase and sale transactions. A contract entered into under this subsection must be filed with the commission in the manner provided by IC 8-1-2-42.

(h) This section does not require an electric utility or steam utility to construct any additional facilities unless those facilities are paid for by the owner or operator of the affected alternate energy production facility, cogeneration facility, or small hydro facility.

SECTION 3. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) Subject to subsection (g) and not later than July 1, 2008, the commission shall adopt rules to amend the following:

(1) The commission's rules concerning cogeneration and alternate energy production facilities, as codified at 170 IAC 4-4.1.

(2) The commission's rules concerning net metering, as codified at 170 IAC 4-4.2.

(3) The commission's rules concerning customer-generator interconnection standards, as codified at 170 IAC 4-4.3.

The commission shall adopt the rules required by this subsection in the same manner as emergency rules are adopted under IC 4-22-2-37.1.

(c) The rules adopted by the commission under subsection (b)(1) must do the following:

(1) Specify that a qualifying facility includes an alternate energy production facility that produces electricity from any of the following technologies, if the alternate energy production facility otherwise meets the requirements of a

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qualifying facility:

(A) Solar.

(B) Wind.

(C) Hydroelectrical facilities.

(D) Turbines using renewable fuels.

(E) Fuel cells using renewable fuels.

(F) Organic waste biomass, including anaerobic digestion.

(2) Provide that the rates paid by a generating or nongenerating electric utility for the purchase of energy from a qualifying facility must equal at least ninety percent (90%) of the retail rate charged by the electric utility to:

(A) the qualifying facility for electricity supplied to the qualifying facility (other than backup power, maintenance power, or interruptible power), if the qualifying facility is a customer of the electric utility; or

(B) another retail customer with similar load characteristics as the qualifying facility, if the qualifying facility is not a customer of the electric utility.

(d) The rules adopted by the commission under subsection (b)(2) must do the following:

(1) Allow a net metering customer to interconnect a net metering facility with a nameplate capacity of one hundred (100) kilowatts or less to a distribution facility of an electric utility.

(2) Provide that a facility that generates electricity through any of the following technologies may qualify as a net metering facility under the commission's net metering rules, if the facility otherwise qualifies as a net metering facility under the commission's net metering rules:

(A) Solar.

(B) Wind.

(C) Micro-hydroelectrical facilities.

(D) Micro-turbines using renewable fuels.

(E) Fuel cells using renewable fuels.

(F) Organic waste biomass, including anaerobic digestion.

(3) Provide that an electric utility may not require an eligible net metering customer who is a residential customer of the electric utility to maintain insurance against loss arising out of the use of the customer's net metering facility if the customer's net metering facility meets:

(A) the certification requirements set forth in the commission's customer-generator interconnection

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standards; and

(B) the requirements of the electric utility's Level 1 interconnection review procedure, as required by the commission's customer-generator interconnection standards.

(e) The rules adopted by the commission under subsection (b)(3) must do the following:

(1) Specify that a customer-generator facility with a nameplate capacity of one hundred (100) kilowatts or less qualifies for an electric utility's Level 1 review procedure.

(2) Provide that an electric utility may not require a customer-generator facility that is also a net metering customer to maintain insurance against loss arising out of the use of the customer-generator facility if the customer-generator facility meets:

(A) the certification requirements set forth in the commission's rules; and

(B) the requirements of the electric utility's Level 1 interconnection review procedure.

(f) Rules adopted under this SECTION expire on the earlier of:

(1) the date the rules are adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36; or

(2) January 1, 2010.

(g) Not later than June 1, 2008, the commission shall do the following:

(1) Evaluate the rules codified at 170 IAC 4-4.1 for compliance with subsection (c). To the extent that any rules codified at 170 IAC 4-4.1 do not meet the requirements set forth in subsection (c), the rules are void.

(2) Evaluate the rules codified at 170 IAC 4-4.2 for compliance with subsection (d). To the extent that any rules codified at 170 IAC 4-4.2 do not meet the requirements set forth in subsection (d), the rules are void.

(3) Evaluate the rules codified at 170 IAC 4-4.3 for compliance with subsection (e). To the extent that any rules codified at 170 IAC 4-4.3 do not meet the requirements set forth in subsection (e), the rules are void.

Not later than June 15, 2008, the commission shall notify the publisher of the Indiana Administrative Code and Indiana Register of any rules that are void under this subsection. The publisher shall remove the rules that are void under this subsection from the Indiana Administrative Code.

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1 (h) Not later than November 1, 2008, the commission shall
2 report to the regulatory flexibility committee established by
3 IC 8-1-2.6-4 on the commission's progress in finally adopting,
4 under IC 4-22-2-24 through IC 4-22-2-36, the emergency rules
5 initially adopted by the commission under subsection (b).

6 (i) This SECTION expires January 1, 2010.

7 SECTION 4. An emergency is declared for this act.

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